



Billing Code: 4333–15

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2016–N059; FXES11130200000–167–FF02ENEH00]

Notice of Availability of a Draft Safe Harbor Agreement and Draft Environmental Assessment for Activities within Austin, Bastrop, Burleson, Colorado, Lavaca, Lee, Leon, Milam, and Robertson Counties, Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft safe harbor agreement with assurances, draft environmental assessment, and permit application.

SUMMARY: This notice advises the public that the Texas Parks and Wildlife Department (TPWD; applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed programmatic safe harbor agreement (agreement) between the applicant and the Service that would authorize incidental take resulting from voluntary activities to restore, maintain, enhance, or create

habitat for the endangered Houston toad. The Service also announces the availability of a draft environmental assessment (EA) that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act. We are making the permit application package, including the draft safe harbor agreement, and draft environmental assessment available for public review and comment.

DATES: We will accept comments received or postmarked on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Any comments we receive after the closing date or not postmarked by the closing date may not be considered in the final decision on this action.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Room 4012, Albuquerque, NM 87103, or send a request by email to fw2_hcp_permits@fws.gov.

Obtaining Documents:

- *Internet:* You may obtain copies of the EA and draft Safe Harbor Agreement on the U.S. Fish and Wildlife Service's (Service) web site at <http://www.fws.gov/southwest/es/AustinTexas/>.
- *U.S. Mail:* A limited number of CD-ROM and printed copies of the EA and draft Safe Harbor Agreement are available, by request, from the Field Supervisor, by mail at the Austin Ecological Services Field Office, 1071 Burnet Road, Suite 200, Austin, TX 78758; by phone at 512-490-0057; or by fax at 512-490-0974.

Please note that your request is in reference to the draft Safe Harbor Agreement for the Houston toad.

- *In-Person:* Copies of the EA and draft Safe Harbor Agreement are also available for public inspection and review at the following locations, by appointment and written request only, 8 a.m. to 4:30 p.m.:
 - U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., Room 6034, Albuquerque, NM 87102.
 - U.S. Fish and Wildlife Service, 1071 Burnet Road, Suite 200, Austin, TX 78758.

Comment submission: You may submit comments by one of the following methods.

- *U.S. Mail:* U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 1071 Burnet Road, Suite 200, Austin, TX 78758; by phone at 512–490–0057; or by fax at 512–490–0974.
- *Electronically:* fw2_hcp_permits@fws.gov.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Rd, Suite 200, Austin, TX 78758; by telephone 512–490–0057; or by facsimile 512–490–0974. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: This notice advises the public that the TPWD has applied to the Service for an enhancement of survival permit pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Act). The permit application includes a proposed programmatic safe harbor agreement (agreement) between the applicant and the Service for a period of 30 years. The proposed agreement will authorize incidental take during voluntary activities to restore, maintain, enhance, or create habitat for the endangered Houston toad (*Anaxyrus [=Bufo] houstonensis*). The Service also announces the availability of a draft environmental assessment that has been prepared to evaluate the permit application in accordance with the requirements of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*; NEPA). We are making the permit application package, including the draft safe harbor agreement, and draft Environmental Assessment available for public review and comment.

Background

Under a safe harbor agreement, participating property owners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act. Safe harbor agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions as a result of increased target species abundance due to their efforts to improve conditions for listed species on their property. Application requirements and issuance criteria for enhancement of survival permits through safe harbor agreements are found in 50 CFR 17.22 and 17.32.

Proposed Action

The proposed action involves the issuance of a section 10(a)(1)(A) enhancement of survival permit (permit) by the Service to the applicant and approval of the proposed programmatic safe harbor agreement to facilitate recovery activities for the benefit of the federally listed endangered Houston toad on non-Federal lands within the current known range of the species. The requested term of the permit is 30 years. Landowners enrolled under the Agreement would implement conservation activities to benefit the endangered Houston toad and in turn receive assurances consistent with the Safe Harbor Agreement Policy, as amended (64 FR 32717 and 69 FR 24084) and related implementing regulations (50 CFR 13 and 17). Non-Federal landowners within Austin, Bastrop, Burleson, Colorado, Lavaca, Lee, Leon, Milam, and Robertson Counties, Texas, could be enrolled under the agreement, if finalized, by entering into a cooperative agreement with the applicant.

The cooperative agreement would include: (1) A map of the property and its legal location; (2) the portion of the property to be enrolled and its acreage; (3) a description of the existing structures and habitat types that occur on the portion of the property to be enrolled, including accurate descriptions of vegetation, water features, and soil types; and (4) a detailed account of conservation activities to be undertaken on the portion of the property to be enrolled. After signing a cooperative agreement, landowners would receive a certificate of inclusion to document the landowners' participation in the agreement and convey incidental take authorization from the applicant to certificate recipients. The applicant would be responsible for annual monitoring and reporting

related to implementation of the agreement and cooperative agreements, and fulfillment of their provisions.

We have worked with the applicant to design conservation activities expected to have a net conservation benefit to the Houston toad within the nine Texas counties to be covered under this proposed agreement; however, landowners would not have to conduct every activity in this list in order for their actions to have a net conservation benefit on Houston toads. These conservation activities include: (1) brush management to create desired understory conditions; (2) forest enhancement/restoration to create favorable canopy conditions; (3) prescribed burning to restore, create, and maintain desired understory and ground cover conditions; (4) removal of sod-forming grasses and restoration of native ground cover; (5) enhancement of existing breeding ponds to provide habitat for breeding adults and emerging toadlets; (6) removal of ponds, where it would be beneficial to do so; (7) control of red imported fire ants to maximize successful toadlet emergence from ponds; (8) creation of new breeding ponds; (9) headstarting and/or reintroduction of captively-bred Houston toads; and (10) release and translocation of wild-caught Houston toads.

These conservation activities are expected to: (1) enhance Houston toad foraging and hibernating habitat; (2) create and enhance Houston toad breeding and toadlet emergence habitat; (3) facilitate Houston toad dispersal through the creation and enhancement of habitat linkages throughout the species' range; (4) increase Houston toad population numbers through headstarting and reintroduction; and (5) facilitate viable, self-sustaining Houston toad subpopulations.

Take, as defined by the Act, means “to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. Incidental take is defined by the Act as take that is “incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.” The incidental take of toads may occur from: (1) habitat management actions conducted in accordance with the conservation activities in the Agreement, (2) ongoing land use activities that may have an increased chance of taking a toad if toad numbers increase, as expected, and (3) cessation of the conservation activities if enrolled landowners exercise their option to return the property to its baseline condition, or pre-enrollment condition, as provided for in the final Safe Harbor Agreement Policy (64 FR 32717 and 69 FR 24084).

Alternative

We considered one alternative to the proposed action as part of the Environmental Assessment process—the No Action Alternative. Under the No Action Alternative, a coordinated effort to conserve Houston toads on non-Federal properties using a single programmatic safe harbor agreement and enhancement of survival permit would not occur. Houston toad conservation efforts could take place through the actions of individual landowners without the assurances that a safe harbor agreement would provide. However, it is likely that many landowners would not feel comfortable participating in conservation activities on their properties to enhance habitat for a federally endangered species without coverage for their activities under the Act or assurances that they could eventually take their properties back to their baseline conditions. Therefore, many landowners might not undertake beneficial actions for the

Houston toad on their properties because they would be fearful of attracting an endangered species and increasing their liability under the Act. Conservation efforts for the species would primarily occur within the areas already being managed for the Houston toad within Bastrop County, Texas, with little participation of landowners in other areas of the species' range.

Next Steps

We will evaluate the proposed safe harbor agreement, associated documents, and comments we receive to determine whether the requirements of sections 10(a) and 10(c) of the Endangered Species Act, the Act's implementing regulations at 50 CFR 17.22 (regulations that pertain to safe harbor agreements and endangered species), and NEPA have been met. If we determine that the requirements have been met, we will issue an enhancement of survival permit under section 10(a)(1)(A) of the Endangered Species Act to the applicant in accordance with the terms of the safe harbor agreement and specific terms and conditions of the authorizing permit. We will not make our final decision until after the end of the 60-day comment period and will fully consider all comments received during the comment period.

Public Availability of Comments

Written comments we receive become part of the public record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will not consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representative or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Authority

We provide this notice under section 10(c) of the Act and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Benjamin N. Tuggle
Regional Director, Southwest Region,
Albuquerque,

New

Mexico.

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